

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

JEREMY JOHNSON, individually, as officer
of Defendants I Works, Inc., Cloud Nine, Inc.,
CPA Upsell, Inc., Elite Debit, Inc., Internet
Economy, Inc., Market Funding, Inc., and
Success Marketing, Inc.; as a member of
Defendant Network Agenda LLC; and as the
de facto principal of numerous Defendant Shell
Companies; I WORKS, INC., *et al.*,

Defendants.

Case No.: 2:10-cv-02203-RLH-GWF

ORDER

(Motion for Order—#227)

Before the Court is Receiver Robb Evans of Robb Evans & Associates LLC's
("Receiver") **Motion for Order: (1) Authorizing and Confirming Sale of Personal Property
by Public Auction; (2) Authorizing and Confirming Sale and Redemption of Investment
Interest; (3) Authorizing Receiver to List and Offer for Sale Houseboats, Aircraft, and
Multiple Real Properties; and (4) Granting Relief From Local Rule 66-5 Pertaining to Notice
to Creditors** ("Sale Motion") (##227, 228, filed May 27, 2011). The Court has also considered
Defendants Duane Fielding, Network Agenda, LLC, and Anthon Holdings Corp.'s (collectively,
the "Fielding Defendants") Opposition (##239, 240, filed June 13, 2011), Defendants Jeremy D.

Johnson; I Works, Inc.; Cloud Nine Marketing, Inc.; CPA Upsell, Inc.; Elite Debit, Inc.; Internet Economy, Inc.; Market Funding Solutions, Inc.; Success Marketing, Inc.; Fitness for Life, Inc.'s (collectively, the "Johnson Defendants") Opposition (#245, filed June 20, 2011), the Receiver's Reply to the Fielding Defendants' Opposition (#250, filed June 23, 2011), Plaintiff Federal Trade Commission's ("FTC") Reply (#253, filed June 27, 2011), and the Receiver's Reply to the Johnson Defendants' Opposition (#256, filed June 29, 2011).

BACKGROUND

As the parties are familiar with the facts of this case, the Court will not recount them further except as necessary for the disposition of the Sale Motion. This dispute arises from the FTC's investigation of Johnson and numerous affiliated individuals and corporations who allegedly defrauded the public via internet scams. On December 21, 2010, the FTC filed its complaint pursuant to the Federal Trade Commission Act, and the Electronic Fund Transfer Act, to obtain permanent injunctive relief, restitution, disgorgement, and other equitable relief. On February 10, 2011, the Court issued a Preliminary Injunction Order (#130) ("Preliminary Injunction") that among other things appointed the Receiver to administer assets frozen by the Preliminary Injunction. The Receiver now moves the Court to allow the sale of certain assets. For the reasons discussed below, the Court grants the Sale Motion.

DISCUSSION

I. The Receiver's Sale Motion

Pursuant to 28 U.S.C. §§ 2001 and 2004, a district court has the authority to direct an appointed receiver to arrange a public sale of any real property or personal property under the receivership. § 2001(a). After all interested parties receive notice and a hearing, "the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby" and a price is set at no less than two-thirds of the appraised value. § 2001(b).

1 **A. Johnson Defendants' Opposition**

2 In the Sale Motion, the Receiver asks the Court to authorize the sale or listing for
3 sale of various real property and personal property which are under the Receiver's control. The
4 Johnson Defendants oppose these proposed actions for several reasons. They argue that the office
5 equipment would obtain greater value through means other than a local auction in southern Utah.
6 They further argue that the vehicles identified for public auction are collector's items which will
7 not realize their full value by auction in Hurricane, Utah, but will appreciate in value over time
8 while in storage. In short, the Johnson Defendants oppose the Sale Motion because none of the
9 items are perishable, the current depressed state of the economy favors waiting to sell any assets
10 until a later time, and the assets should remain in place until a final determination is made.

11 The Court concludes that the Johnson Defendants' objections are without merit.
12 The Receiver is charged with the duty to preserve the value of the assets of the receivership, which
13 in this case must be accomplished by preventing the value of these assets and the estate as a whole
14 from decreasing through ongoing expenses to maintain, insure, store, and protect those assets. The
15 Court is satisfied that the Receiver has identified sound business reasons that justify the sale of
16 these assets. Furthermore, nothing in the oppositions filed suggest that the parties with alleged
17 interests in those assets to be sold now would be injured if their interests are converted to cash to
18 be held by the Receiver.

19 **B. Fielding Defendants' Opposition**

20 The Fielding Defendants also oppose these proposed actions based on their
21 purported ownership interest in one parcel of real property, one helicopter, and several additional
22 motor vehicles that the Receiver identified for sale. They argue that the sale of these assets would
23 be premature and would lead to an improper declaration of their value. Further, they contend that
24 the proposed sale would violate the Receiver's duty to preserve the value of the assets pending
25 final adjudication on the merits. In addition, they assert that the Receiver is not authorized to sell
26 the individual Defendant Duane Fielding's assets because he is not specifically covered by the

1 Preliminary Injunction Order (#130, issued Feb. 10, 2011). In sum, the Fielding Defendants make
 2 the same objections to the Receiver's Sale Motion as the Johnson Defendants, and as a result,
 3 warrant the same conclusion.

4 In addition, the Court notes that the Fielding Defendants' purported ownership
 5 interest in these assets seems incredibly aspirational given the evidence set forth by the Receiver.
 6 Nevertheless, even if Mr. Fielding were to show a legitimate ownership interest in these assets, he
 7 could seek appropriate compensation after the FTC's claims are fully adjudicated. The opposing
 8 parties have failed to show that the Receiver's proposed actions would violate the Receiver's duty
 9 to preserve assets, rather the Receiver has adequately shown the Court that liquidating these assets
 10 will limit expenses and avoid further deterioration or loss of value. Therefore, the Court grants the
 11 Receiver's Sale Motion.

12 CONCLUSION

13 Accordingly, and for good cause appearing,

14 IT IS HEREBY ORDERED that the Receiver's Motion for Order: (1) Authorizing
 15 and Confirming Sale of Personal Property by Public Auction; (2) Authorizing and Confirming Sale
 16 and Redemption of Investment Interest; (3) Authorizing Receiver to List and Offer for Sale
 17 Houseboats, Aircraft, and Multiple Real Properties; and (4) Granting Relief From Local Rule 66-5
 18 Pertaining to Notice to Creditors (#227) is GRANTED.

19 IT IS FURTHER ORDERED that:

20 A. The Receiver is authorized to sell the following personal property of the
 21 Receivership Defendants: (a) office furniture (such as desks, chairs, sofas, cabinets, tables, etc.),
 22 televisions, telephones, computers, office artwork and other similar personal property (collectively
 23 the "Tabernacle Office Equipment") from the I Works offices formerly located at 249 East
 24 Tabernacle Street, St. George, Utah known as the "Tabernacle Towers" currently being stored by
 25 Statewide Auction Co., located at 5099 Wheeler Way, Hurricane, Utah; (b) the following vehicles:
 26 1957 Chevrolet Belair Convertible (VIN #VC57L 188500), 1972 Chevrolet Nova SS Clone (VIN

1 #1X27F2L160461, License #FGM 994 – Oregon), 1952 Ford O Matic (VIN #B2LB102645,
 2 License #JTL 488 UT), 1968 Oldsmobile (442 VIN #344778N1446554, License #785 NZP UT),
 3 1972 Chevrolet Chevelle SS 454 (VIN #1D37W2L585777), Honda Pilot Dune Buggy (ATV
 4 License Yr. 2008 #08126055) (collectively, the “Vehicles”) and a custom made snow plane
 5 (Engine No. 6008678) (“Snow Plane”) by public auction pursuant to the following terms,
 6 conditions and procedures (“St. George Personal Property Sale Procedures”), and the sale and
 7 publication procedures of 28 U.S.C. § § 2001 and 2004 are hereby modified accordingly:

8 1. The Receiver is authorized to employ Statewide Auction Company of Salt
 9 Lake City, Utah (“Auctioneer”) to sell the St. George Personal Property at public auction to be
 10 conducted at the business premises of the Auctioneer located at 5099 Wheeler Way, Hurricane,
 11 Utah, pursuant to the Statewide Auction Company Contract dated as of May 4, 2011 (“St. George
 12 Auction Contract”) attached as Exhibit 1 to the Declaration of Kenton Johnson (“Johnson
 13 Declaration”) filed in support of the Sale Motion, and is authorized to compensate the Auctioneer
 14 in accordance with the St. George Auction Contract by paying the Auctioneer an auction
 15 commission of 15% of the gross sales price paid by the purchasers at the public auction for the St.
 16 George Personal Property;

17 2. The Receiver is authorized to sell the St. George Personal Property
 18 individually, in lots or in bulk at the discretion of the Receiver and the Auctioneer, with such
 19 property to be sold “as is, where is, with all faults,” and without representation or warranty of any
 20 kind or nature, express or implied, to the highest bidder at the sale for payment in cash, certified
 21 funds or check with the approval of the Auctioneer;

22 3. The Auctioneer shall provide notice of the auction of the St. George
 23 Personal Property by publishing a written notice of the date, time and place of the auction sale, the
 24 terms of the sale and a summary of the property to be sold at the auction sale at least one time not
 25 less than one week prior to the auction sale in the following newspapers: *Salt Lake Tribune*, the
 26 *Deseret News* and *The Spectrum* in St. George;

1 4. The sales of the St. George Personal Property in accordance with the St.
2 George Personal Property Sale Procedures are hereby confirmed without further notice, hearing or
3 order, and the notice of the hearing on the Sale Motion and publication of notice of the sale as set
4 forth in such procedures is deemed sufficient pursuant to 28 U.S.C. §§ 2001 and 2004;

5 5. To the extent that any of the Vehicles is registered to or deemed to be
6 owned by Jeremy Johnson, the Preliminary Injunction Order, including Section XV.C thereof, is
7 hereby modified to allow the Receiver to sell the Vehicles in accordance with this Order;

8 B. The Receiver is authorized to sell the office furniture and equipment, such as office
9 cubicles, office chairs, telephone system with servers and telephone units, computer servers and
10 towers, keyboards, monitors, executive office furniture including desks, chairs and wood cabinets
11 (collectively, "Ephraim Office Equipment") found in the offices previously occupied by Zibby,
12 LLC ("Zibby"), an entity owned 50% by Jeremy Johnson and 50% by his wife, Charlo Johnson,
13 located at 11 West 700 South, Ephraim, Utah ("Ephraim Office") by public auction to be
14 conducted on the premises at 11 West 700 South, Ephraim, Utah pursuant to the following
15 proposed terms, conditions and procedures ("Ephraim Office Equipment Sale Procedures"), and
16 the sale and publication procedures of 28 U.S.C. §§ 2001 and 2004 are hereby modified
17 accordingly:

18 1. The Receiver is authorized to employ Statewide Auction Company of Salt
19 Lake City, Utah ("Auctioneer") to sell the Ephraim Office Equipment at the Ephraim Office
20 pursuant to the Statewide Auction Company Contract (Ephraim) dated as of May 4, 2011
21 ("Ephraim Auction Contract") attached as Exhibit 2 to the Johnson Declaration filed in support of
22 the Sale Motion, and is authorized to compensate the Auctioneer in accordance with the Ephraim
23 Auction Contract by paying the Auctioneer an auction commission of 15% of the gross sales price
24 paid by the purchasers at the public auction for the Ephraim Office Equipment;

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1 2. The Receiver is authorized to sell the Ephraim Office Equipment
2 individually, in lots or in bulk in the discretion of the Receiver and the Auctioneer, with such
3 property to be sold “as is, where is, with all faults,” and without representation or warranty of any
4 kind or nature, express or implied, to the highest bidder at the sale for payment in cash, certified
5 funds or check with the approval of the Auctioneer;

6 3. The Auctioneer shall provide notice of the auction of the Ephraim Office
7 Equipment by publishing a written notice of the date, time and place of the auction sale, the terms
8 of the sale and a summary of the property to be sold at the auction sale at least one time not less
9 than one week prior to the auction sale in the following newspapers: *Salt Lake Tribune*, the
10 *Deseret News* and a local newspaper of general circulation in Ephraim, Utah;

11 4. The sales of the Ephraim Office Equipment in accordance with the Ephraim
12 Office Equipment Sale Procedures are hereby confirmed without further notice, hearing or order,
13 and the notice of the hearing on the Sale Motion and publication of notice of the sale as set forth in
14 such procedures is deemed sufficient pursuant to 28 U.S.C. §§ 2001 and 2004;

15 C. The Receiver is authorized to liquidate and redeem the private limited liability
16 membership interest held by Orange Cat Investments, LLC Global Wealth Long/Short Commodity
17 Futures Fund, LLC (“Global Wealth LLC”) managed by Marathon Investments, Inc. (“Marathon”),
18 by making a written request to Marathon for redemption of such investment in accordance with the
19 terms and provisions of the Amended and Restated Operating Agreement pertaining to Global
20 Wealth LLC (“Operating Agreement”), and the sale and publication procedures of 28 U.S.C. §§
21 2001 and 2004 are hereby modified accordingly to allow the Receiver to redeem and liquidate such
22 investment in accordance with the Operating Agreement.

23 D. The Receiver is authorized to list for sale two Skipperliner houseboats consisting of
24 a custom 3208 Marine model 1999 Skipperliner 75 foot houseboat named PEPS I and a 1994
25 Skipperliner 74 foot houseboat named Animal House (collectively, “Houseboats”) owned by
26 Orange Cat Investments LLC with Aramark Sports and Entertainment Services, Inc. d/b/a Lake

1 Powell Resorts and Marinas (“Marine Broker”) at prices to be determined in the Receiver’s
 2 discretion and judgment and to enter into a written exclusive listing agreement with the Marine
 3 Broker in connection therewith providing for ordinary and customary terms and conditions for the
 4 listing of similar watercraft including ordinary and customary sales commissions not to exceed 6%
 5 of the gross sales price for the Houseboats, and further providing that acceptance of offers and
 6 completion of any sales of the Houseboats is subject to entry of an order of this Court approving
 7 such sale after notice and an opportunity for hearing;

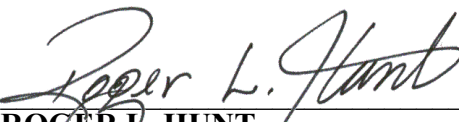
8 E. The Receiver is authorized to (1) engage one or more companies specializing in the
 9 sale of helicopters and fixed wing aircraft to list for sale at prices to be determined in the
 10 Receiver’s discretion and judgment the following aircraft: (a) 1978 Cessna P210N, Tail No.
 11 N4827P, (b) 2008 Robinson R44 Raven II helicopter, Tail No. N41286 owned by Trigger, LLC,
 12 (c) 1968 Piper Navajo, Tail No. N300WA; (d) 2005 Robinson R44 Raven II helicopter, Tail No.
 13 N321WT, (e) 2009 Piper Malibu Mirage, Tail No. N32ED, and (f) a 1978 Beech C24R, Tail No.
 14 N20135 (collectively “Aircraft”), and (2) enter into written exclusive listing agreements with one
 15 or more companies specializing in the listing and sale of the particular type and model of the
 16 Aircraft (“Aircraft Brokers”) providing for ordinary and customary terms and conditions for the
 17 listing of similar Aircraft including ordinary and customary sales commissions in a range of 6% to
 18 8% of the gross sales price for each of the Aircraft with a minimum commission amount of
 19 \$10,000, providing for ordinary and customary advertising expenses, and further providing that
 20 acceptance of offers and completion of any sales of the Aircraft is subject to entry of an order of
 21 this Court approving each such sale after notice and an opportunity for hearing;

22 F. The Receiver is authorized to (1) engage local, regional or international real estate
 23 brokers experienced in the sale of the types of real properties, including experience in residential
 24 and commercial real estate and sales of raw land in the local market (“Sales Agents”), (2) list for
 25 sale at prices to be determined in the Receiver’s discretion and judgment the following residential
 26 and commercial real property assets of the Receivership Defendants: (a) 82 West 700 South, St.

George, Utah (“82 West Property”); (b) 575 East 30 North, Ephraim, Utah (“575 East Property”),
 (c) 11 West 700 South, Ephraim, Utah (“11 West Property”); (d) 302 West Hilton Drive, St.
 George, Utah (“Hilton Drive Property”); (e) 147 North 100 West, Mendon, Utah (“147 North
 Property”); (f) 392 West 400 South, Manti, Utah (“392 West Property”); (g) 575 S. Main,
 Richfield, Utah (“Richfield Property”); (h) 127 Hollister Avenue, Santa Monica, California
 (“Hollister Property”); (i) No. 91 North Front Street, Belize City, Belize (“Belize Property”) (j)
 the five parcels of adjacent and/or related parcels of raw land identified as Parcel #4200-B-HV,
 St. George, Utah, Parcel #4201-A-HV & Parcel #4201-B-HV, St. George, Utah and Parcel #4203-
 HV & Parcel #4150-B-HV, St. George, Utah (“Washington County Land”); (k) Part Sec 25, T33S,
 R16W, SLBM, Beryl, Utah (“Beryl Land”); and (l) 750 South Main, Highway 89, Ephraim, Utah
 (“South Main Land”), and (3) enter into written exclusive listing agreements with such Sales
 Agents providing for ordinary and customary terms and conditions for the listing of similar real
 property assets including ordinary and customary sales commissions not to exceed 6% of the gross
 sales price for each of the real properties, except for the Belize Property as to which the sales
 commission should be in an amount not to exceed 10% of the gross sales proceeds, providing for
 ordinary and customary advertising expenses, and further providing that acceptance of offers and
 completion of any sales of the real properties is subject to entry of an order of this Court approving
 each such sale after notice and an opportunity for hearing; and

G. Notice of the Sale Motion is hereby deemed sufficient under Local Rule 66-5 based
 on the service of a notice of the Sale Motion’s filing and the Sale Motion itself on all parties and
 service of a notice of the Sale Motion’s filing on all known non-consumer creditors of the estate
 concurrent with the filing of the Sale Motion with the Court.

Dated: August 25, 2011.


ROGER L. HUNT
 United States District Judge